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GOVERNMENT OF INDIA

CONSTITUENT ASSEMBLY OF INDIA

NOTIFICATION

New Delhi, the 7th December, 1949

No. CA./43/Ser/49-III.—In exercise of the powers conferred by sub-clause (b) of clause (1) of article 388 of the Constitution of India and of all other powers enabling him in that behalf, the President of the Constituent Assembly of India is pleased to make the following modifications in the Constituent Assembly Rules for the purpose of filling casual vacancies in the seats of members of the Provisional Parliament including vacancies referred to in clauses (3) and (4) of article 379 of the said Constitution, namely:—

MODIFICATIONS

1. For rule 5 of the said Rules, the following rule shall be substituted —
“5. (1) *Casual vacancy in the office of a member representing a Province* —

When a vacancy occurs by reason of death, resignation or otherwise in the office of a member of the Assembly representing a Province other than Delhi and Ajmer-Merwara, the President shall notify the vacancy and call upon the constituency concerned to elect a person for the purpose of filling the vacancy

Provided that in the case of any such vacancy as is mentioned in clause (3) of article 379 of the Constitution of India, a notification under this sub-rule calling upon the constituency concerned to elect a person for the purpose of filling the vacancy may be issued notwithstanding that such vacancy has not occurred.

(2) For the purpose of filling any such vacancy as is referred to in sub-rule (1), the President shall ordinarily make a request in writing to the Speaker of the Provincial Legislative Assembly concerned, or, as the case may be, the President of the Coorg Legislative Council, for the election of a person to fill the vacancy as soon as may reasonably be practicable

(3) Where the vacancy is in the seat of a member elected by a Provincial Legislative Assembly, the seat shall be filled by election by the members of the said Assembly, and at any such election every member of that Assembly shall be entitled to participate and vote.

(4) Where any such seat as is referred to in sub-rule (3) was, immediately before it became vacant, held by a person belonging to the Scheduled Castes or to the Muslim or the Sikh community, no person shall be qualified to be

chosen to fill that seat unless he belongs to the Scheduled Castes or to the Muslim or the Sikh community, as the case may be.

(5) Where under sub-rule (4) a vacancy is to be filled by a person belonging to the Scheduled Castes or to the Muslim or the Sikh community, the notification to be issued under sub-rule (1) or the request to be made under sub-rule (2) of this rule for the filling of such vacancy shall specify that the person to fill that seat shall belong to the Scheduled Castes or to the Muslim or the Sikh community, as the case may be.

(6) At an election to fill more vacancies than one, a member of the Provincial Legislative Assembly shall have as many votes as there are seats to be filled but shall not give more than one vote to any one candidate.

(7) Only an Indian, that is to say, a person domiciled in any part of India, which is participating or is entitled to participate in the Assembly may be nominated for election as a member of the Constituent Assembly.

(8) As soon as may be after the receipt of the request mentioned in sub-rule (2), the Speaker of the Provincial Legislative Assembly concerned—

(a) shall appoint by suitable notification a person to be the Returning Officer for the election and may also in like manner appoint any person who may be subject to the control of the Returning Officer, to perform all or any of the functions of the Returning Officer at any such election, and

(b) shall also appoint by suitable notification—

- (i) a date, not later than fifteen days after the date of notification, for the nomination of candidates;
- (ii) a further date, not later than the third day after the first mentioned date, for the scrutiny of nominations;
- (iii) a further date, not later than two days after scrutiny, for withdrawal of his candidature by a candidate; and
- (iv) a further date, not later than twenty-one days from the date fixed for withdrawal, on which a poll shall, if necessary, be taken.

(9) The Speaker of the Provincial Legislative Assembly concerned shall, if a poll is taken, by suitable notification, fix the hour at which the poll shall commence and the hour at which it shall close on the date fixed under sub-clause (iv) of clause (b) of sub-rule (8) and the place at which the poll shall be taken.

(10) The votes shall be given by ballot and in person.

Provided that, when the Provincial Legislative Assembly is not in session, votes may, at the option of the voter, be given in person or by registered post:

Provided further that no votes shall be given by proxy.

(11) The ballot paper shall contain the names of the validly nominated candidates arranged alphabetically and votes shall be recorded by placing a mark on the ballot paper opposite the name of the candidate, or, when more vacancies than one are to be filled, by placing marks on the ballot paper, subject to the provisions of sub-rule (6), opposite the names of the candidates, for whom the voter desires to vote.

(12) After the votes are duly counted, the result of the election shall be declared and reported to the President.

(13) Where a poll is taken at an election to fill more vacancies than one and the vacancies to be filled include a vacancy or vacancies to be filled by a person or persons belonging to the Scheduled Castes or to the Muslim or the Sikh community, the Returning Officer shall, after the counting of votes has

been completed, out of the total number of candidates for all the vacancies first declare elected to the vacancy or vacancies to be filled by a candidate or candidates belonging to the Scheduled Castes or the Muslim or the Sikh community, the candidate or candidates belonging to the Scheduled Castes, or the Muslim or the Sikh community, as the case may be, to whom the largest number of valid votes has been given, and then out of the remaining candidates he shall declare elected to the vacancy or vacancies which are not to be so filled the candidate or candidates to whom the largest number of valid votes has been given.

(14) Where an equality of votes is found to exist between any candidates and the addition of one vote will entitle any of the candidates to be declared elected, the determination of the person or persons to whom such one additional vote shall be deemed to have been given shall be made by lot to be drawn in the presence of the Returning Officer and in such manner as he may determine.

(15) Save as otherwise provided in these rules, the elections to the Constituent Assembly shall be held, *mutatis mutandis*, in accordance with the rules and regulations for the time being in force in regard to elections held by the Provincial Legislative Assembly, and, where no such rules and regulations exist, in accordance with the standing orders that may be made in this behalf by the President of the Constituent Assembly.

Where any such rules or regulations exist, it shall be competent for the Speaker of the Provincial Legislative Assembly concerned to make, with the previous approval of the President, such modifications therein as may be necessary for the purposes of this sub-rule.

(16) The foregoing rules shall apply in relation to Coorg, subject to the following modifications, namely—

(a) that for references to the Provincial Legislative Assembly there shall be substituted references to the Coorg Legislative Council, and for the references to the Speaker of the Provincial Legislative Assembly there shall be substituted references to the President of the Coorg Legislative Council, and

(b) that instead of the members of the Provincial Legislative Assembly taking part in the election, the non-official members of the Coorg Legislative Council shall take part in it.

(17) (a) If any vacancy occurs by reason of death, resignation, or otherwise in the office of a member representing Delhi or Ajmer-Merwara in the Constituent Assembly, the President shall notify the vacancy and shall call upon the Chief Commissioner of Delhi or Ajmer-Merwara, as the case may be, to take steps to hold a bye-election to fill the vacancy.

(b) The bye-election shall be held, as nearly as may be, in accordance with the procedure prescribed by the Legislative Assembly Electoral Rules, as in force on August 1, 1947, for the election of a member to represent the Delhi or as the case may be, the Ajmer Merwara constituency of the Indian Legislative Assembly."

2. For rule 5-A of the said Rules, the following rule shall be substituted:—

"5A. (1) *Casual vacancy in the office of a member representing an Indian State or more than one such States.*—When a vacancy occurs by reason of death, resignation or otherwise in the office of a member of the Assembly representing an Indian State or more than one Indian State specified in column 1 of the Annexure to the Schedule to these Rules, the President shall notify the vacancy and make a request in writing to the authority specified in the corresponding entry in column 3 of that Annexure to proceed to fill the vacancy as soon as may reasonably be practicable by election or nomination, as the case may be:

Provided that in the case of any such vacancy as is mentioned in clause (8) of article 379 of the Constitution of India, a notification may be issued and a request may be made under this rule for the purpose of filling the vacancy notwithstanding that such vacancy has not occurred.

Provided further that in making a request to fill a vacancy by election under this rule, the President may also request that the election be completed within such time as may be specified by him.

(2) For the purpose of filling any such vacancy as is referred to in sub-rule (1) in the office of a member of the Assembly representing Indian States specified in column 1 of Part II of the Annexure to the Schedule to these Rules, the provisions of Rule 5 of these Rules shall apply as if such vacancy were a vacancy in the office of a member of the Assembly representing the Province specified in the corresponding entry in column 3 of that Part.

3. In clause (b) of rule 51 of the said Rules, after the word and figure "column 1" the words and figure "of Part I" shall be inserted.

4. In the Schedule to the said Rules—

(a) in sub-paragraph (2) of paragraph 4, for the words "shall be filled" the words, brackets, figures and letter "shall, subject to the provisions of sub-rule (2) of rule 5A of these Rules, be filled" shall be substituted,

(b) In paragraph 5—

(i) after the word and figure "column 1" the words and figure "of Part I" shall be inserted,

(ii) for the words "that Annexure" the words "that Part" shall be substituted.

By order,

S. N. MUKERJEE, Joint Secy.